HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

Standing Committee on Industry, Science and Technology

INDU • NUMBER 103 • 1st SESSION • 42nd PARLIAMENT

EVIDENCE

Thursday, April 26, 2018

Chair

Mr. Dan Ruimy

Standing Committee on Industry, Science and Technology

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● (1530)

[*English*]

The Chair (Mr. Dan Ruimy (Pitt Meadows—Maple Ridge, Lib.)): Welcome, everybody, to meeting 103 of the Standing Committee on Industry, Science and Technology. We are continuing our statutory review of the Copyright Act.

Just for everybody's information, we are televised today, so say hi to everybody in TV land and wave.

Today we are joined by the Association of Canadian Publishers, Glenn Rollans, President; and Kate Edwards, Executive Director. From the Canadian Federation of Library Associations, we have Victoria Owen, Chief Librarian, University of Toronto Scarborough; and Katherine McColgan, Executive Director. From the Writers' Union of Canada, we have John Degen, Executive Director. Finally, from Colleges and Institutes Canada, we have Denise Amyot, President and Chief Executive Officer; and Mark Hanna, Associate Dean, the Business School, Humber Institute of Technology and Advanced Learning.

We're going to start off with the Association of Canadian Publishers.

You each have up to seven minutes per organization.

Mr. Rollans, the floor is yours, sir.

Mr. Glenn Rollans (President, Association of Canadian Publishers): Thank you, Mr. Chair and members of the committee.

I am Glenn Rollans, President of the Association of Canadian Publishers, known as ACP, and co-owner and publisher of Brush Education in Edmonton. I am joined by Kate Edwards, Executive Director of ACP. We acknowledge that we're meeting today on the unceded traditional lands of the Algonquin Anishinabe people.

ACP represents almost 120 Canadian-owned English-language book publishers across Canada, active in print and digital, in all genres, for audiences around the world. Canadian-owned publishers publish roughly 80% of the new books by Canadian authors each year. We are risk investors and creative partners in books. We fill the role in the book world that film producers fill in the film world.

Copyright has immense importance to our businesses, to Canadian creators and creative industries, and to our shared project of being a unique and important country on the earth.

We've been damaged by the Copyright Modernization Act. We're not asking you to turn back the clock. We're asking you now to unleash the unique contributions to Canada that come from our sector. It won't happen if you don't fix our marketplace. That means, first, clarify fair dealing for education by ending unfair copying. Adding education as a purpose for fair dealing crashed an inexpensive, smoothly functioning system. Second, promote a return to collective licensing in the education sector. It works; it's simple. Third, increase statutory damages to discourage systematic infringement. Fourth, ensure that Canada meets its international treaty obligations, and fifth, promote the effective operations of the Copyright Board.

I want to impress on you that this is not a zero-sum contest between copyright creators and copyright users. The rights you protect for me and my colleagues are not taken away from anyone. They are protected for everyone. We want readers, and readers want the works we create and publish. Real balance is when both sides win. That's what's desirable and attainable.

The evidence of what actually gets copied in the education system came before the Federal Court in Access Copyright v. York University. It's come before the Copyright Board. The facts are the facts. Canada's schools, universities, and colleges pay for some of the things they copy beyond legal limits, but not all. Changing practices in classrooms have not changed the fact that they use our works far beyond legal limits, without paying for them beyond those limits. That creates a free zone that we simply can't compete with.

The evidence of whether Canadian publishers are damaged by unfair copying has been tested in Federal Court, and the decision is that we have been damaged. Those facts will not change on appeal.

I need to say as clearly and as bluntly as I can that if you don't intend for there to be damage, you need to take a leadership role in stopping it and reversing it. As a working publisher I'm disappointed that the damage we predicted before the amendment in 2012 came to pass. I'm disappointed that our government then asked us to prove the damage through studies, and when we did, they asked us to await the decision in Access Copyright v. York. And when we did that, they asked us to wait for the results of an appeal. Now we're asked to wait for the results of this review, and we may then be asked to wait for the results of an election.

My colleagues and I are suffering real-time damage triggered by this act. Graduates of Canadian colleges and universities are losing opportunities to make a living in creative professions.

The necessary changes are completely in your power. Much good and no harm will come from them. Fair payment for valuable contributions to their education does not harm Canadian students. It helps secure their future success. Published resources are not driving the high cost of education. Collective licensing, in particular, is probably the biggest bargain in education. It offers the whole world of copyright-protected works for a few dollars a year, avoiding all kinds of other costs.

One more important topic.... I don't have the time or the community authority to properly address the topic of indigenous copyright, but it's important for this group to recognize that indigenous peoples in Canada stress the importance of compensation when it comes to using traditional or community knowledge.

● (1535)

Last, I encourage you to think of Canada's copyright-reliant industries and professions as a sector that should grow and thrive and make its unique contributions to our national project, our national character. We create IP. We support community, culture, and education. We're part of the future. Support us, and we'll contribute far more than we cost.

We look forward to your questions.

Thank you, Mr. Chair.

The Chair: Thank you very much.

Before I proceed, I was remiss. We have a new member here.

Mr. Clarke, welcome to INDU and copyright.

[*Translation*]

Mr. Alupa Clarke (Beauport—Limoilou, CPC): I'm very happy to be replacing Mr. Bernier and to hear about these issues, with which I was not familiar.

Thank you.

[*English*]

The Chair: We also have with us the chair of the heritage committee, Julie Dabrusin. Welcome today, and we look forward to hearing your comments.

We're going to move now to the Canadian Federation of Library Associations. Ms. Owen, you have up to seven minutes.

[*Translation*]

Ms. Victoria Owen (Chief Librarian, University of Toronto Scarborough, Canadian Federation of Library Associations): Mr. Chair, Mr. Vice-Chair and members of the committee, good afternoon.

Thank you for inviting us to speak to you this afternoon. My name is Victoria Owen, and I am the Chief Librarian of the University of Toronto Scarborough. I represent the Canadian Federation of Library Associations.

[*English*]

With me is Katherine McColgan, the Executive Director of the Canadian Federation of Library Associations.

CFLA comprises national, regional, and provincial library associations that represent Canadian libraries and archives. Libraries have a societal role to provide equitable access to information and preserve knowledge. In Canada the Copyright Act recognizes the unique function of libraries to achieve the government's public policy objectives around research, innovation, and lifelong learning through the act's exceptions and limitations.

CFLA applauds Canada for steadfastly maintaining the copyright term of life plus 50 years, established in the Berne convention. CFLA also praises Parliament's 2016 amendment for the creation of alternate format works for persons with perceptual disabilities, in compliance with the 2013 Marrakesh treaty.

CFLA is quite satisfied with the fair dealing exceptions in the act. With the 2012 modernization, Parliament confirmed fair dealing and added new purposes for education, parody, satire, and user-generated content.

Decades before the 2012 amendment, the shift to licensed content, rather than purchased, and the massive increase in the use of freely available digital materials was well under way. Some argue that the 2012 amendments contributed to a decline in Canadian publishing. This is a flawed argument.

First of all, the Canadian publishing industry is not in decline. In fact, Statistics Canada reports a profit margin increase from 9.4% in 2012 to 10.2% in 2016. Second, public and academic libraries invest heavily in electronic materials, and the libraries have paid up front for all the permitted uses. For example, at my university, where the licences or fair dealing do not cover use, transactional licences are paid. In 2017-18 the University of Toronto libraries paid more than $285,000 in transactional licences. This is over and above the $27.7 million spent on acquisitions, 75% of which is spent on electronic resources.

Fair dealing promotes innovative interactions that create new works and contribute to the economy.

In the digital environment, content in libraries is acquired under licence. This often means that clauses in a contract override fair dealing uses and other statutory rights. Interlibrary loans may be prohibited, and Canadians may be unable to print an excerpt of a work. The Copyright Act should prevent contracts from overriding exceptions and limitations that undermine citizens' statutory rights and the public policy goals of education and research.

CFLA believes that the principles in the Copyright Act should be applied consistently. The 2016 amendment to ratify the Marrakesh treaty permitted the circumvention of digital locks to achieve access for people with a print disability. Technological protection measures disadvantage digital works. In order to exercise statutory rights, CFLA recommends that the act be amended to exempt exceptions for libraries, archives, and museums from the prohibition on circumvention, including fair dealing uses. The law should be clear that it is only illegal to circumvent digital locks for the purpose of copyright infringement.

With most government information exclusively distributed over the Internet, researchers, libraries, and archives must be assured that making copies of digitized and born digital government works for preservation and dissemination does not violate copyright. Copyright on federal government publications, crown copyright, should not apply to works that the government has freely made available to the public.

Canadian libraries are working toward reconciliation and may hold indigenous knowledge through research, appropriation, or with the participation of indigenous communities and authors. Canada must be consistent with the UN Declaration on the Rights of Indigenous Peoples. CFLA recommends that Canada acknowledge the rights of indigenous peoples to maintain, control, protect, and develop traditional knowledge and cultural expressions within our intellectual property regime, and incorporate access, use, and protection by developing appropriate protocols with indigenous peoples.

Canada has achieved balance in the Copyright Act by granting extensive economic rights and moral rights to creators and copyright owners, and by granting limited exceptions to these economic rights to users, libraries, and cultural institutions. These exceptions serve the public interest, advance public policy goals, and fuel Canada's innovation and economy.

● (1540)

Thank you.

● (1545)

The Chair: Thank you very much.

We're going to move right to the Writers' Union of Canada.

John Degen, you have up to seven minutes, sir.

Mr. John Degen (Executive Director, Writers' Union of Canada): Thank you, and thank you all for serving as part of this review of the Copyright Act.

Canada's authors have been waiting a long time for the Copyright Act to be repaired and it's been a painful and expensive wait for us.

I am an author. I am here representing myself and the 2,100 members of the Writers' Union of Canada. I am also chair of the International Authors Forum in the U.K., which represents close to 700,000 writers and visual artists around the globe. The world's authors are also watching this process with great interest and considerable anxiety.

We now know that the 2012 imposition of education as a category of fair dealing has delivered none of its intended benefits and has caused exactly the kind of economic damage many of us predicted. Students now pay more for their education. Teachers are less able to legally access works, and are much more likely to end up in court. Meanwhile those who provide the work education copies, Canada's writers, have suffered a disastrous income decline. Fully 80% of our licensing income has simply disappeared because schools now copy for free what they used to pay for. These are facts that may be ignored by some, but they're indisputable.

Before the 2012 amendment, Parliament was promised that there would be "no loss of revenue for people who are in the creative economy", and that "The education system, the sector, pays for licences and copyright, and will continue to do so." These are direct quotations from educational testimony in 2011.

Authors are regular guests in classrooms across the country, and many have personally witnessed beleaguered teachers photocopying an improvised, free "class set" of materials, sometimes entire books. This is happening. Despite all the education technology promises and vagaries about disruption, open access, and the changing landscape, Canadian students continue to be fed a steady diet of photocopied and scanned excerpts from copyright-protected works.

You've recently heard from educational representatives that they continue to pay copyright licences. To be clear, they continue to pay some licences, mostly for expensive foreign journal content, but they are not paying the reasonable and affordable collective licences of Canada's commercial authors and publishers. Each year in Canada over 600 million pages of published work are copied for use in educational course packs, both print and digital, and the education sector is essentially claiming all of that work for free. That is the real world result of education's copying policies.

Those same policies have been thoroughly discredited by York University's copyright infringement loss in Federal Court, yet are still widely in use by school boards and post-secondary institutions across the country. Canadian schools and education ministries are now actually suing Canadian authors through our collective in a desperate attempt to re-establish the ground they lost in the York case. As a result of all of this, many Canadian authors have simply called it a day and stopped creating works. I ask you: Are these the outcomes Parliament desired in 2012?

Canada's authors embrace the future. We don't fear innovation, disruption, or the natural evolution of the marketplace. We lead those things. We create mobile literatures and cross-platform multimedia work that is stretching and expanding the definition of the word "book" in exciting ways. I, myself, do most of my creative writing on my mobile phone.

But we've all learned a lot about digital disruption in the last six years. The scandalous misuse of private data by online platforms is not unrelated to the crisis of unfair copying of creative content. Both arise from a free culture ethos that counsels taking first, and asking for permission later, if at all. This devalues the work of creative professionals.

Most other nations have wisely resisted the siren call of free culture. Canada, sadly, is the outlier. Right now Canada's writers and publishers have authorized and directed our collective to design a blockchain-enabled rights management system. That is real Canadian innovation, but it won't succeed without a clear, strong law at its back.

Authors are investors in education. Most of us have advanced degrees, we all pay taxes, and many of us are or soon will be paying our children's tuition. My own annual access copyright cheque used to go directly into my kids' RESPs. That's pointless now. Our labour creates the content so often copied by our schools. We do not deserve this unfair dealing.

The solution is simple, and it's truly fair. Remove education as a category of fair dealing and require collective licensing for educational copying.

● (1550)

The word "education" has been in the fair dealing section less than a decade, and all it's done is cause damage and clog the courts. The existence of a reasonable, regulated, collective licensing structure is the access solution favoured by most of our global partners. It should be ours as well.

Thank you very much.

The Chair: Thank you very much.

Finally, we are going to move to Colleges and Institutes Canada, Ms. Amyot.

[*Translation*]

Ms. Denise Amyot (President and Chief Executive Officer, Colleges and Institutes Canada): Mr. Chair and members of the committee, good afternoon.

Thank you for the invitation to appear before you today. My name is Denise Amyot, and I am the President and Chief Executive Officer of Colleges and Institutes Canada. I am joined by Mark Hanna, of Humber College, the biggest college in the country.

[*English*]

Mark Hanna is here to provide the practical perspective of fair dealing basically on the ground.

First of all, I want to recognize that we are on the unceded territory of the Algonquin Anishinabe people.

I want to say that we appreciated Mr. Ruimy's remarks of last week when he highlighted the responsibility and role of all stakeholders to contribute to the dialogue during this review. This is a prime example today.

Colleges and Institutes Canada and its members recognize the importance of both creators' and users' rights. This study is an opportunity to build on advances brought forward by Bill C-11, the Copyright Modernization Act, and to further contribute to an innovative economy in Canada by supporting learning, knowledge creation, and strong creative industries.

Colleges and Institutes Canada represents Canada's publicly supported colleges, institutes, CEGEPs, and polytechnics and is an international leader in applied education and innovation. CICan's members offer more than 10,000 different education and training programs to a broad range of one million students comprised of recent secondary school graduates but also adult learners, indigenous learners, new Canadians, international students, and university graduates. Ninety-five per cent of Canadians live within 50 kilometres of a college campus or one of our learning facilities.

In 2012, Bill C-11 and a ruling by the Supreme Court of Canada fundamentally changed the copyright landscape. Although fair dealing existed, in fact, for centuries as a right prior to 2012, the inclusion of education as a fair dealing purpose and the Supreme Court's decision confirmed fair dealing as a much broader right than had been applied by the education sector prior.

To help institutions govern fair dealing copying, our associations collaborated with the Council of Ministers of Education of Canada and Universities Canada to develop fair dealing guidelines. Since 2012, almost 90% of our members, excluding those in Quebec covered by Copibec, have adopted the guidelines or implemented new policies to manage copyright compliance.

Colleges and institutes respect copyright and the importance of compliance. Consultations with our members indicate that they engage their staff regularly in copyright-related awareness raising and training. This has not reduced the purchase of materials. Quite the contrary. Over 70% of our members have maintained or increased licensing expenditures since 2012. Statistics Canada reports that expenditures of print and electronic acquisitions for colleges and institutes have increased by 26% since 2012, and sales of educational titles for publishers in Canada rose by 5% between 2014 and 2016.

The provisions of fair dealing drive knowledge creation by providing students and faculty with reasonable access to the content they need. Colleges and institutes offer a broad range of programming and credentials such as upgrading diplomas, trades, degrees, and post-diplomas to a diverse student population, and they need a vast array of learning materials.

● (1555)

Bill C-11 also provided for the educational use of the Internet, which facilitates distance learning and access to education for rural, remote, and northern communities. Our members report that Internet materials are now the most commonly used educational resources, followed by videos, and then textbooks.

The educational world continues to evolve at a rapid pace, and advances in technology are having a profound impact on how our members deliver their programming. Learners expect quick, flexible, 24-7 access to learning materials. They have multiple devices and learn not just in the classroom but from wherever they happen to be. There is a greater use of learning resources created by and for industry, open access publications, open data, sources such as Creative Commons, and e-reserve systems in libraries.

Industry requires nimble training programs that respond quickly to employer and community needs. Colleges and institutes work closely with business and industry to ensure that the curriculum is aligned with marketplace needs and provides students with work-integrated learning and co-op opportunities.

Copyright legislation impacts teaching, learning, and knowledge dissemination. Confirming education as an explicit purpose of fair dealing and making provisions for the educational use of the Internet contribute to the delivery of a 21st-century education, and also support learning in an innovative economy. The current copyright regime is working well for our constituency, and we believe it strikes a good balance that respects the law and jurisprudence.

In its review, we urge the government to ensure that the legislation not only deals with the realities of today but is also flexible enough to address whatever changes might occur in the future. As an important step towards reconciliation, we also recommend consultation with indigenous communities to work towards the protection of indigenous knowledge.

Thank you for the time you are investing in this important topic. Our association and its members are prepared to assist the committee in its work.

[*Translation*]

My colleague Mr. Hanna and I will gladly answer any questions.

Thank you.

The Chair: Thank you very much, Ms. Amyot.

[*English*]

We're going to start with Mr. Sheehan. You have seven minutes.

Mr. Terry Sheehan (Sault Ste. Marie, Lib.): Thank you very much for that excellent testimony. I really appreciate it. It was great to have some discussion here about the different perspectives.

My first question goes to Glenn. I have a number of friends who are in the creative economy, including a sister-in-law who recently published a children's book through a process. It was amazing to see it unfold, and to see how much time it takes for an author to work with the various components, from idea through to writing it, to working with publishers and illustrators, etc. We truly appreciate the need to have strong copyright laws to protect our creative economy and those working in it.

We also want to strike a balance in making sure our educational institutions and students have the opportunities they need.

I'll start with Glenn. You mentioned that you see a number of issues with fair dealing. In the context of the educational sector, what would you see as a reasonable interpretation of fair dealing? You talked about a lot of the problems, but could you delve further into what you might perceive as a solution for me?

● (1600)

Mr. Glenn Rollans: Thanks for your question.

The solution part is amazingly simple. Over the years, I've grown used to hearing this be presented as a very complex issue. The solution is to relicense. Licences that were in place before the amendment to the Copyright Act were low-cost, and they covered the waterfront, including all the grey areas. They offered a convenient and I would say a moral way for users to make sure that the things they were using were compensating the people who created them.

The thing that makes it so simple is that behaviour hasn't changed. The unfair copying guidelines that were pushed out into the K-12 system and the post-secondary system were based on the licences. Some of the wording was borrowed from the licences. It meant that behaviour by professors, behaviour by teachers, instructors, and students didn't have to change during that transition. The only thing that happened was that compensation dropped out.

Adding compensation back fixes the marketplace, because it means that suddenly, instead of comparing a free system with a system that has a cost attached to it—any cost—you have a balance, as you use the word, between potential uses. Some cost less and use less. Some cost more and use more.

That's the balance we need to talk about, not a balance that suggests that when copyright is protected, that protection somehow damages students. I think that in fact it supports them in their education.

Mr. Terry Sheehan: My next question would be for John, from the Writers' Union, as somebody who is also an author. I have the same kind of question, if you could delve into it.

In a recent press release, your organization referred to the 2012 amendments to the Copyright Act as "highly contentious and poorly constructed", resulting in significant declines in educational royalty payments to authors, and it called upon the federal government to "prioritize an immediate fix."

Do you have any specific suggestions related to that particular statement?

Mr. John Degen: First of all, that was well quoted. Thank you.

Not to repeat what my colleague Glenn said, the great irony of what happened in 2012 was that Parliament intended, I believe, to save students money, give greater access to professors, and smooth the process. Student costs have gone up since 2012, considerably.

I've done a lot of research on this. Especially in the student press there is considerable indication that course packs, a sample of which I have here today, have in some cases doubled in price. Why did that happen, when there's no licensing and everything is being claimed as a fair dealing? It is because somebody has to assess that fair dealing. There has to be a centralized body within the university to do all of that assessment. It slows down the process.

There were times, certainly early on—and I'm sure it has continued—when professors were not able to get their course packs done in time for the start of class because of that bottleneck of fair dealing assessment. The price went up because the administrative fees were larger than the $26 per student that was being charged through the access copyright licence.

While I'm on the subject of the $26 per student, that's how it's calculated. It's not necessarily how it's meant to be paid. The bill goes to the educational institution. They choose to pass that charge on to the student. That is their decision. I've done a lot of research on university and college budgets across the country, and they can afford a licence. For many of them, it's a fraction of 1% of their budget.

What we're talking about here is an efficiency. Licensing is an efficiency. It's cheaper and it works better than what we have now. To me, that's the solution: go back to licensing.

● (1605)

Mr. Terry Sheehan: Thank you very much.

The next question is to Colleges and Institutes Canada.

Last week, Paul Davidson of Universities Canada said that the universities are spending increased amounts every year on purchasing content. Is it also the case for colleges and institutions?

Ms. Denise Amyot: I have some statistics. The amounts are not the same. They differ by about $250, if I recall. I'm trying to find the extra amount.

Mr. Terry Sheehan: You can just submit that amount.

Ms. Denise Amyot: Yes, exactly. I'll submit it. In fact, Statistics Canada data shows that college and institute expenditures on library acquisitions, both print and electronic, have increased by 26% since 2011-12. You understand that in the college system we use a variety of materials, as I said.

If I may, I beg to differ with what John and Glenn mentioned earlier, because fair dealing is not the reason for what is being expressed right now. The reality is that the learning landscape has changed, and it has changed tremendously. There is a shift now to the use of digital content. Portals are built and paid for by institutions, and they have faculty group licences to commonly use the resources, with faculty creating and sharing their own resources, including open educational resources, Creative Commons, and publicly available material on the Internet, to create and share resources within the college system.

You know what? Learners—I'll stop here—are demanding access in different ways.

The Chair: We're a little over time on this one, but thank you. I'm sure we are going to come back to that.

Mr. Jeneroux, you have seven minutes, please.

Mr. Matt Jeneroux (Edmonton Riverbend, CPC): Thank you, Mr. Chair.

If I may, before I get into my questions, I would like to put on notice a motion, but not to be debated today, because we do have very esteemed guests here before us and we do have a lot of questions on copyright. I will read the motion into the record.

The motion reads:

> That the Standing Committee on Industry, Science and Technology undertake a study over a period of four meetings to review the tax revenue losses to the federal government, including but not limited to royalties, personal and corporate income taxes, and levies, as well as review the fiscal impacts, including loss of business and economic activity, resulting from the construction delays of the Trans Mountain Expansion Pipeline, that the Committee review the potential long-term federal benefits, including employment opportunities that the project would generate, and that the Committee would report back to the House and make a recommendation as to whether or not the Government of Canada declare the Trans Mountain expansion project to the national advantage of Canada and invoke Section 92.10(c) of the Constitution of Canada.

This is particularly timely, considering the initiative of funding aid to anti-pipeline activists through the Dogwood Initiative.

Thank you, Mr. Chair.

The Chair: Thank you very much. We have received your notice, and you can move on with your questions.

Mr. Matt Jeneroux: Thank you.

Thank you for coming here today, everybody. I appreciate your taking the time to be here.

I want to speak to a line of questioning that I had at the end of the last committee meeting convened on Tuesday. That regarded the digital locks and TPMs. I am hoping to direct those questions to you, Mr. Rollans, and you, Ms. Edwards, and perhaps to you, Mr. Degen, if you'd like to weigh in as well.

Canada is bound by its international obligations under WIPO to prohibit the circumvention of technology and protection measures: TPMs and digital locks. Given that TPMs are a source of some controversy in the education sector, which is protected by fair dealing, how does your organization suggest that Canada can reconcile its obligations in favour of TPMs while ensuring educational institutions can fully exercise their rights under fair dealing?

● (1610)

Mr. Glenn Rollans: The quick answer to this—thanks for the question—from our standpoint is that TPMs for us were a major issue when we were talking in 2012. They've receded into the background at this stage. I think in many ways they're an issue that has been solved by technology and by relationship. We don't dispute the right of educational institutions to use materials they've purchased within the terms of the purchase, and we support the Marrakesh treaty.

In general, we see TPMs as having a role in protecting copyright. Beyond that, I don't have the technical answer to your question.

Mr. Matt Jeneroux: Mr. Degen.

Mr. John Degen: My organization also supported the Marrakesh treaty. However, we view TPMs as simply a business model. The solution to accessing works behind TPMs is payment—payment and licensing. It's really that simple. In the licensing environment, the lock is unlocked.

Mr. Matt Jeneroux: Thank you.

Mr. Rollans, during your opening statement, you mentioned clarifying fair dealing. This is something we've heard from a number of publishers and licensing collectives. I'm hoping that you can clarify what "clarifying fair dealing" means to you.

Mr. Glenn Rollans: When we were looking at the proposed amendments before they were passed into law, we raised the issue—particularly around the inclusion of education as a purpose for fair dealing—as being something that was lacking the good fences that make good neighbours.

We have no differences with the project of education in Canada. We support it. We think it is obviously a public good. We have been through it ourselves. We have kids that rely on it. We're not anti-education, but "education" is such a broad word, and it essentially replaced a similar phrase in the act, which was "private study". Education thus opened the opportunity for systematized, broad-scale, high-volume copying that was intended to avoid payment for work that was being used beyond legal limits.

We saw the education sector—after committing to not abandon licences—abandon the licences and immediately substitute a policy into this very large grey zone that was created by the very broad word, the inclusion of "education". The specific policy looked to us, curiously, exactly like the terms of the licences that were abandoned.

Nature abhors a vacuum. We can't go back and turn back the clock. I wish we had been there with a policy before the education sector was. That policy, pushed out broadly in post-secondary and in the K-to-12 world, essentially defined the practice as if it were defining law. This is the body, the Parliament of Canada, that makes law. I think "clarifying" means substituting policy, potentially, or adding words to the legislation that make it very clear that what is not intended is systematic, large-scale copying that seriously compromises the rights of the people who created the works.

Mr. Matt Jeneroux: Mr. Degen, do you want to comment?

Mr. John Degen: When I think of fair dealing in an educational context, I think of a student going to the library and photocopying an article for research or private study. I have two degrees. I am a bit older than the students of today, so I didn't have a lot of digital resources. However, I wasn't without digital resources in my time. I completed my education, for which I had a rather large student debt, with research and private study as my fair dealing options, and I felt unrestricted in that education. I really don't think, despite any technological advances today, that there has been a need for an expansion on that.

What we're talking about when we talk about fair dealing being applied to copying in schools, is not the student going to the library and copying for research and private study. We are talking about published books that are full of works that we have written and have not given permission to be sold to students. The permission comes with the licence. We need to reapply the licence.

● (1615)

The Chair: Thank you very much.

We're going to move to Mr. Masse. You have seven minutes.

Mr. Brian Masse (Windsor West, NDP): Thank you, Mr. Chair, and thank you to the witnesses for being here today.

I don't disagree that the cost of education has certainly not been related to this situation specifically. It might be part of the overall thing, but if we want to solve that problem, having no educational fees for university and post-secondary education would be a fairer thing for students. It would eliminate them as pawns between different parties in the decisions of courts, in terms of who pays for what in the materials for them to become educated. However, hopefully that is a separate thing as we look at this. It's almost a distraction in some respects, because we want something we can control.

One of the things I am concerned with, though, is the digital trends that are taking place and compensation, and the things we can't see for the future. Has anyone looked at different models, in terms of what other countries have done?

I have another question, but perhaps we can go quickly around and give examples for the committee to look at.

Mr. John Degen: I mentioned that we're looking at a blockchain-enabled rights management system. That would be digital for sure.

Just to back up a little.... I know we are in an age of technological advancement and I know education is changing. I have two kids who are heading to university in a couple of years. I have been very involved in their education all along, so I've seen all the changes happening. I've also seen that in their backpacks are photocopies, from kindergarten to where they are now, in grade 10. The digital shift is happening. It has not happened.

Mr. Brian Masse: Can you answer the question? I have limited time, and I'm interested in whether you've looked at other models outside of Canada, from other countries, on how to deal with the change and authors and other creators being compensated? That's what I'm looking for right now.

Mr. John Degen: I think the course management systems that were mentioned on the other side here are widely in use around the world, but in other jurisdictions they're in a licensing environment.

Mr. Brian Masse: Can you name any countries? If you can't now, it's okay.

Mr. John Degen: Sure. Go ahead, Kate.

Ms. Kate Edwards (Executive Director, Association of Canadian Publishers): For a long time Australia has had a comprehensive licence that includes print and digital uses. It is a negotiated rate between the education sector and rights holders. We want to emphasize the content, regardless of format, and the Australian model addresses that quite elegantly.

Mr. Brian Masse: Thank you.

The Chair: Is there anyone else?

Ms. Owen.

Ms. Victoria Owen: In changing legislation we would look for flexible language so that there would be an interpretation and, I think, the technological neutrality, so we don't get stuck in the kinds of things we did with the digital locks. It would apply regardless of the format of the material, so your statutory rights are secure in whatever format.

I think Australia does have some very good new legislation. They did a review of their copyright act. They had fair dealing, and I think they want to move toward fair use. It's much more flexible. They would think of introducing things like exceptions as "such as" so there's a broad interpretation.

Many countries around the world have contract overrides. I can give you the names of those countries.

Mr. Brian Masse: Yes, you can follow-up.

Ms. Victoria Owen: Also, you can override TPMs.

So, yes, there are very good examples around the world for all the things that certainly CFLA has asked for.

Mr. Brian Masse: Thanks. Could you send that to us?

I know we have to create our own, but I'm looking for how this also fits with the bigger international picture later on, because it has been raised that we're out of step.

Ms. Denise Amyot: I don't have a specific example of other countries, but I'd like to share something that hasn't been said yet with respect to a change that is needed.

● (1620)

Mr. Brian Masse: I just cut off a previous witness.

Ms. Denise Amyot: You'll come back later. Okay.

Mr. Brian Masse: I have one other question, and I'm going to try to get both in really quickly.

Mr. Rollans, I want to touch on the study that was done for the Province of Ontario. It had three recommendations and conclusions. One of them wasn't to adjust fair dealing. Maybe you can highlight why that was the case and a little more on the study.

I thought the study was really good at introducing a lot of comprehensive arguments on the change of the digital world and the complications, but fair dealing was not one of the recommendations.

Mr. Glenn Rollans: I can't. I confessed at the beginning that I'm an Alberta publisher. I'm not familiar with the study. Perhaps Kate my colleague has a better handle on that.

Ms. Kate Edwards: Is this the study that our association commissioned?

Mr. Brian Masse: Yes. It's "Digital Trends".

Ms. Kate Edwards: That study was commissioned by our association to look at opportunities for Canadian publishers delivering content through learning management systems at the K-to-12 level. The scope was much broader than that as we got started on the research and quickly found out that it would be useful to look at a broad range of initiatives that are under way.

In terms of the recommendations that came out of the study, this was looking at initiatives that publishers could work on collectively in new products, marketing, and so on. It didn't address fair dealing. That wasn't the mandate of the consultants who were hired.

Mr. Brian Masse: I think it noted fair dealing, but it only had the three recommendations.

Mr. Glenn Rollans: Could I just address that?

The Chair: Okay.

Mr. Glenn Rollans: I'm sorry to interrupt, but that was a national study. I was confused by the reference to it as an Ontario study.

It wasn't a study of fair dealing or copyright. It was a study of digital opportunities in LMS marketplaces.

Mr. Brian Masse: Witnesses have about 20 seconds each to add something.

Go ahead. I cut you off.

Mr. John Degen: No, I'm good.

There's a legal model in the U.K., if you're interested, which is that fair dealing does not apply if a licence is available in education.

Mr. Brian Masse: Okay, great.

Thank you, Mr. Chair. I'll try to come back later.

The Chair: I'm going to recommend, though, that if there's something that you need to add and you don't have time, you can always submit it in writing to the clerk as we're just trying to make sure we get as much information as we can.

We're going to move to Mr. Baylis.

You have seven minutes.

Mr. Frank Baylis (Pierrefonds—Dollard, Lib.): Thank you, Chair.

When talking about fair dealing—and there are obviously two different viewpoints here at the table—the first thing I'd like to do is to get an understanding of how much money we're talking about. I don't expect you to have that answer here today. Would each of you prepare for us, going back to 2004 or earlier, how much money you were or were not making, how much you were or were not paying for Canadian content. I'm only interested in Canadian content.

For example, Mr. Rollans, you said it has cost you money. I'd like to know, year by year, how much money it has cost you.

For the libraries and so on, you might say, "Hey, we're paying more and more money." If you say that to us, then I'll have to come back and say, "Guess what. It doesn't cost you anything, so we'll get rid of fair dealing." That would be my recommendation.

I'd like to have an honest response from all of you as to how much, year by year, you are saving, perceive to be saving, or perceive to be losing so that we can put a bracket around this.

Now I'll start off with you, Mr. Rollans. You said you're against fair dealing completely, but I assume if someone had to copy one page of a tome, or something like that, you would not be against it. Is there a percentage or some form of fair dealing that you could work with, or does nothing go?

Mr. Glenn Rollans: No, but I would have to say I believe in fair dealing. I think most copyright creators are also copyright users. We're not looking for a world where there's transactional clearance of every use of copyright. It doesn't make sense and it doesn't recognize the rights of a user. What doesn't recognize the rights of a creator is large-scale copying that effectively prejudices the interests that we create.

Mr. Frank Baylis: What would be fair to you?

Mr. Glenn Rollans: I'm sorry to say this, but there is, in my mind, no bright line. Every work is different. A poem may be a matter of 50 words, and a textbook—

Mr. Frank Baylis: I understand that, but if we have to write something, it has to be written in ink. I need to have an idea of what you think can and can't work. This doesn't work, whatever is written, so what can work?

● (1625)

Mr. Glenn Rollans: What's there in the licences is variously 10% to 20% of a work or a complete chapter. That works for me under licence.

Mr. Frank Baylis: Could you repeat that?

Mr. Glenn Rollans: Depending on the sector being licensed, it's 10% of a work or 20% of a work or a complete chapter. Those were the terms in the licence. That's what's been named now in the unfair copying practices.

Mr. Frank Baylis: Would that work for you?

Mr. Glenn Rollans: I think that works as a licence use. As a pre-use, it doesn't work.

Mr. Frank Baylis: Can you hold that thought?

Ms. Owen, would what Mr. Rollans put forward work or not work for you?

Ms. Victoria Owen: I think fair dealing is a public policy issue. I think it is very problematic if you turn it into a bright line. What the Supreme Court gave us in the 2004 case is the structure, the framework, to do a fair dealing analysis. It's complicated. Is it for permitted use, and how do we apply the six factors they gave us? How much of the work...? Are there alternatives to the work? Can you buy it? There are many factors that go into it.

I think this is a public policy issue. You can shape it, but it should remain nuanced because it doesn't work. It doesn't work if you apply it to poetry or literature or scholarly works. I think you need to have it—

Mr. Frank Baylis: Mr. Rollans would say it should be harder and cleaner and you say it can't be. Is that what I understand?

Ms. Victoria Owen: From the framework of public policy, I don't think it works that way. The Copyright Act has the ability for people to sue for infringement, then it goes before the courts, and then you do the analysis. There's a whole framework there that's already in place.

Mr. Frank Baylis: Okay.

I don't know if, Mr. Degen, you have anything to add to that.

Mr. John Degen: Sure. You seem to be looking for a number, and I don't know if I can provide a better number.

Mr. Frank Baylis: It doesn't have to be a number. You're not happy, if I understand it, with what exists today, so I need to at least understand what you would be happy with. They are happy. Is there a compromise or is there no compromise? That's what I'm looking for.

Mr. John Degen: I appreciate the question.

I think maybe one of the areas that we actually agree on is that bright lines are very difficult in terms of numbers when you're looking at fair dealing. I would instead look at it in terms of a condition, and that condition is that when an individual is claiming fair dealing, I think the consideration should be fairly broad. When an institution or a sector is claiming fair dealing, I think the consideration should be as narrow as possible so as not to damage an established market. That's what happened in 2012. A very broad exception was applied to a sector rather than to an individual, and our market was damaged if not completely destroyed.

Mr. Frank Baylis: Understood.

[*Translation*]

Ms. Amyot, do you have anything to add?

Ms. Denise Amyot: That is an excellent question, Mr. Baylis. If that's okay with you, I will ask my colleague to answer you. Since he works on the ground, he will be able to give you the facts and tell you what works and what doesn't.

[*English*]

Dr. Mark Hanna (Associate Dean, The Business School, Humber Institute of Technology and Advanced Learning, and Representative, Colleges and Institutes Canada): I first have to say that I'm concerned when our colleagues are referring to faculty in institutions as copying in an unlimited fashion, because for everyone I've worked with, and everyone I currently work with, the goal with all librarians and faculty is to respect copyright and to minimize the amount of copying. That is, I think, the first thing.

If the belief is that copying is happening in a very irresponsible way, then your question really is key, but I think if we can at least consider the possibility that this is not the case, that it's not that people are looking to copy widespread. In fact, we are really trying to make sure we're not copying more than we should.... At the same time, I'd put the question to my colleagues that.... Let's say it was 5%. Are they saying that all the other trends that are happening in the industry wouldn't have had the same impact that they've had today? I don't believe that's the case.

Mr. Frank Baylis: Fair enough.

I'm interested in helping Canadian creators, not foreign creators. Is there something that the users—either the library or you—might see as some creative idea that could help our Canadian producers and our Canadian authors and writers? Do you have any thoughts on that?

Ms. Victoria Owen: After listening to the exchanges at the earlier meetings and trying to understand about the large numbers that seem to be missing from somebody's pocketbook, and where they're coming from, and where they're going, and who's missing them, I begin to understand....

Libraries and educational institutions are paying more. It seems that Statistics Canada is showing us that there's no harm being done to the publishing industry. Book sales in Canada are going up. Maybe we should look at what's happening within the industry with the distribution of that income. That's opaque. Who can see that? If we can't see it, we can't know where that's going and where the shortfall is. Maybe that's somewhere we could begin to have a look —at things that aren't clear or transparent. That might be one way.

● (1630)

The Chair: Thank you very much.

We're going to move to Mr. Lloyd for five minutes.

Mr. Dane Lloyd (Sturgeon River—Parkland, CPC): Thank you, and if I'm too quick, I'll be splitting some of my time with Mr. Jeneroux.

My first question is for Colleges and Institutes Canada.

You noted that you're spending more than ever on licensing. How much of your licensing budget goes towards Canadian content and Canadian authors?

Ms. Denise Amyot: I'll ask my colleague to talk about it, because, again, he will give you a precise example from a college. If you want something broader, I could give it to you after.

Dr. Mark Hanna: First I will say that Humber College is proud—my colleague mentioned a 26% increase—to report a 50% increase since 2012 in terms of expenditures, so we're on the high end of that average. We do purchase quite a bit of Canadian content, and I have a list here that I can share with you. I don't have a specific percentage, but I can definitely send that to the committee after the fact.

Mr. Dane Lloyd: Do you pay Access Copyright any licensing fees?

Dr. Mark Hanna: We don't license with Access Copyright currently, no.

Mr. Dane Lloyd: Which other Canadian groups would you pay for copyright then?

Dr. Mark Hanna: We have databases: Canada in Context, Canada's Information Resource Centre, Grey House Publishing Canada.... We have many, many Canadian resources that we license with.

Mr. Dane Lloyd: Are those groups compensating writers and authors?

Dr. Mark Hanna: All I know about is the licence that we pay. I would have no insight, as my colleague mentioned, in terms of how the writers are paid.

Mr. Dane Lloyd: Thank you.

I guess my question would be to the publishers. Are these organizations that are receiving the licensing fees compensating your institutions and authors?

Mr. Glenn Rollans: Without knowing more about the licences, it's hard to be specific about that. What I can say is that, in some ways, we're talking about a distraction. If somebody says they're spending a lot of money here, and then when facts are examined in court or at the Copyright Board, the evidence says they're not spending any of that money here, we should have a very simple discussion. That's what we're talking about. Instead, we're in a situation now where mandatory tariffs are disregarded and not paid and where we have a licensing environment that has broken down because there is misinterpretation, unfair interpretation of fair dealing.

In general, that money is not coming to us. Our members report that transaction licensing is almost non-existent and the collective licensing revenue has almost disappeared. Access Copyright had its annual general meeting on Friday, and it's revenue from K to 12 and post-secondary is down 89%, and ironically, Canadian creators now from foreign educators get more licensing revenue than they get from Canadian sources.

Mr. Dane Lloyd: Thank you.

I guess this question is to John Degen. Would you call this an existential threat to Canadian content and Canadian culture in terms of creation in the future?

Mr. John Degen: Absolutely. I have members who have contacted me to say that they're very sorry but they can't pay their dues this year because they don't have the dependable revenue that they used to have. It's not a pension. It's payment for use. Their work is still being used. The payment has just disappeared.

They're dropping out. They're saying they can't do it anymore.

Mr. Matt Jeneroux: Thank you.

In 2015, then science minister Ed Holder put forward a policy on public access for the granting councils, NSERC, SSHRC, and CIHR, that everything must be freely accessible within 12 months.

I'll ask this of Colleges and Institutes Canada first. What is your institutions' and your organizations' position on if this were to extend to private, not the granting councils, but to other funding research through government? Would you be supportive of a policy such as that?

Ms. Denise Amyot: First, as you know, with colleges, in the applied research that we do, we do not keep the IP most of the time.

Your question is a very complex question and I believe it's a question for government to decide, but in consultations with a variety of stakeholders because there are different aspects to that. At the end of the day, we need to look at what's in the best interest of the country. As to principles, Canadians need better access to government-subsidized research and we agree that all should be made available for free to the public, but there need to be some exceptions. That might be because sometimes it needs to be kept confidential for proprietary reasons, or because there are revenues that are attached.

I have to say yes in principle, but there need to be some exceptions.

● (1635)

Mr. Matt Jeneroux: Thank you very much.

I'm out of time.

The Chair: We can come back to that.

We're going to move to Mr. Longfield. You have five minutes.

Mr. Lloyd Longfield (Guelph, Lib.): I didn't realize I was next up. I'm enjoying the conversation, though.

Ms. Amyot, today is World Intellectual Property Day and we've gotten into a new intellectual property regime, so colleges will be taking part in helping with the move-out of the ideas from Canadian researchers. I'm thinking we have a similar challenge here in terms of managing our data in Canada, managing our information that we have. I think we've seen from this conversation so far today that we don't really know the supply chain impacts all the way down. I think part of this study will need to get into that more.

I'm very concerned, and I've been concerned in the last few meetings, around Canadian content, and it was great that Mr. Lloyd was bringing that forward because, if we don't get access to Canadian content, then the researchers stop researching and we eliminate the value out of our value chain.

This is a longer question that's a lead-up. Germany has looked at its regime and it's ready to turn it up. Some major changes have been proposed in Germany. I've been reading the Australian document from March 2018. It's talking about fair use with some specified exceptions.

Where would we go among...? We need everybody at the front of the table here to help us with how we make this fair and reasonable for Canada in terms of managing the supply—I'm calling it a supply chain. I apologize to the artists and creators but that's where things start. Maybe we could go right to left in terms of management of the supply chain and how we can understand better where it isn't working, because we've been trying for a couple of meetings now to get to the bottom of it.

Mr. John Degen: I'd go back to my earlier comment about the difference between individual and sectoral or industrial use. When we are talking about copyright in the context of industrial use, we have to consider markets, and when we are talking about user rights, which is a fairly new term, I believe we have to consider individuals. These are very different things and they exist on very different scales.

When we're talking about 600 million pages of work copied every year in the educational sector, that's an industrial use. That needs to be a market. Without it, my members are losing 80% of their licensing income.

Mr. Lloyd Longfield: Something ties to volume, then, in terms of regulation.

Mr. John Degen: Absolutely, something ties to volume, and something ties as well to administrative or industrial use. It's often conflated in the fair dealing debate, that it's just a student doing a single photocopy. That's not what we're talking about.

Mr. Lloyd Longfield: Okay. Thank you.

Mr. Glenn Rollans: I'll step in, if that's okay. I'd first like to encourage you not to think of copyright as something that's adjusted to keep cultural industries within the lines. We're supposed to do well. We're supposed to be tigers for Canadian culture, Canadian identity, and looking at—

Mr. Lloyd Longfield: If can interrupt, we're also keeping value in Canada, in our economy. The creators are participants in the economy.

● (1640)

Mr. Glenn Rollans: Absolutely, yes, the information economy, the local economy, and the national economy.

The key thing when thinking about adjustments is to attach value to payment. Doing that keeps a functioning economy. When you break that chain, you break it, and that's why the principle of specialized exceptions only is so important, and why the constant attention to not prejudicing the rights of the creator is so important. If there's payment attached to value, it works.

Mr. Lloyd Longfield: Thanks, and both Australia and Germany have very definite exceptions that they've really worked on.

Mr. Glenn Rollans: Yes, they've specified.

Ms. Katherine McColgan (Executive Director, Canadian Federation of Library Associations): There are a couple of things to touch on here. One is that the supply chain needs to be transparent in how it's doing business. Things are very opaque right now. We have talked about that already.

The second goes to supporting Canadian creators. There are other avenues that the government could be considering. We have the Canada book fund, which is managed by Canadian Heritage. We also have the Canada Council for the Arts, which manages a number of grants and strategic funds. They also manage the public lending rights program. These are areas where the government could look at increased sustainable funding that goes directly to the creators and bypasses what we're talking about, which is the publishing industry increasing and the creators' dollars going down.

The Chair: Thank you very much. You're out of time.

We're going to move to Mr. Clarke for five minutes, please.

Mr. Alupa Clarke: Thank you, Mr. Chair.

I'm very glad to be on this committee for the first time. I would like to start off with.... It seems very important to acknowledge ancestral ownership of territory, but it is very important for me to acknowledge ownership of territory at the present time. I would like to say that we are in British-North American territory, and that Ottawa is the capital of Canada, as chosen by Queen Victoria. It's the capital of all Canadians, including indigenous people, of course.

I felt I needed to say that. Thank you, sir.

I'm enjoying this examination today concerning the rights of authors, because I think it goes profoundly to the roots of our liberal democracy. I see two major interests unfolding and competing today in front of me. We can see two major paradigms. One is an ideal, access to knowledge, and the other is a legal principle from John Locke, of course, the protection of property, which is at the base of what you're asking for and which is very important.

If I correctly understand what you are stating this afternoon, our goal here as parliamentarians is to carefully find equilibrium between competing interests in democracy. You seem to be telling us that in 2012 we perhaps put too much emphasis on access to knowledge, compared to the protection of rights, in this case, authors' rights. This is perhaps true. Perhaps we did that, but my question is this. If we reflect on it, many more Canadians are currently in need of access to knowledge than the number of people that you represent.

I'm not saying that to be rude or whatever, but that's what we have to do here. I'm trying to understand why in 2012 we came to this kind of reasoning and conclusion. Maybe it's just an oversight. We always do that in the House of Commons. It's normal. That's why we always review things and that's how it should work.

What you're telling us today is that we should change it because we didn't put enough emphasis on the rights and interests of authors. That's what you're basically saying.

Mr. John Degen: Is the question for me?

Mr. Alupa Clarke: For the three of you.

Mr. John Degen: I think what actually happened in 2012, and before 2012, was that a false dichotomy was introduced into the debate, which is the idea that you describe, that users and creators are competing somehow over something.

I'm a creator. All my members are creators. We are also users of copyrighted content. We've all been students. We're all engaged in this interaction with content. To set it up as a competition, as some sort of a see-saw where we have to have a perfect balance, is probably not the right way to look at it. I think we need something that works for everybody, but not necessarily something that works for everybody exactly equally at all times.

If I'm a user as well as a creator, that means, as you said, there are far more users than there are creators. You put one giant group on one side of a see-saw and a small group on the other side of the see-saw, and we're to the moon. I just don't see that as a workable way of looking at it.

● (1645)

Mr. Alupa Clarke: Thank you very much. That's a good answer.

[*Translation*]

I would like to put a question to Ms. Amyot.

What kind of a relationship do you have with the Copyright Board of Canada? How would you describe that relationship?

Ms. Denise Amyot: We don't actually have a direct relationship with the board.

Mr. Alupa Clarke: But your members do.

Ms. Denise Amyot: Some of our members are authors or writers. They write books or articles. That said, the main task of those who work in colleges is to teach. A nuance should be made in the case of post-secondary education. We, as an organization, do not have a relationship with the board. Book writers have a relationship with it.

I will ask my colleague Mr. Hanna whether he has a concrete example for you.

[*English*]

Dr. Mark Hanna: Mr. Clarke, is it about our relationship with the Copyright Board?

Mr. Alupa Clarke: Yes, please.

Dr. Mark Hanna: We are the recipients of their decisions, which we always wait very patiently for.

The Chair: Thank you.

Mr. Masse, you have two minutes....

Sorry. You guys got me all mixed up.

Ms. Dabrusin you have five minutes.

Ms. Julie Dabrusin (Toronto—Danforth, Lib.): Thank you.

It's been a very interesting conversation.

My first question is actually for the colleges.

Ms. Amyot, when you did your opening statement, you talked about how you felt that the right balance had been reached in 2012, yet I'm trying to reconcile that with what I'm hearing from the other side of the table, which is that they don't feel that balance. I'm wondering, given that you're telling us the right balance has been reached, how do you reconcile that, because we're hearing different things?

Ms. Denise Amyot: It's a very good question. I gave some numbers. I think I will reiterate them if I may.

About 70% have maintained or increased their licensing expenditures since 2012, plus we note that they have spent more in library acquisitions, both print and electronic—

Ms. Julie Dabrusin: If I could stop you, the only reason is that I know that Mr. Baylis has asked for all of the numbers from everyone, and I don't have very much time. Essentially I was just hoping you could try to explain. Are you saying his numbers don't bear out what they're saying?

Ms. Denise Amyot: Yes, and I'll tell you, it's because the landscape has changed. Right now we are only looking at things as if they were the same. If you look at the music industry, it has changed a lot in the last five years. If you look at the way we shop, it has changed a lot in the last five years. If you look at the way we watch movies, it has changed a lot. We used to have to go somewhere or we needed to go physically. If you just talk to Humber, Mark was telling me that now 80% of their acquisitions are things that are online.

Ms. Julie Dabrusin: Some of the examples you're using are personal use, and I think actually if I heard the Writers' Union right, there's been a distinction drawn between personal use and institutional use, which is what they've been getting at. The fact is that it's being reached differently, but there's still content that's being used in the classes and that's what the concern is that I'm hearing over here.

Maybe I'll skip to something else. I'm not sure I've figured out how to reconcile this, because that's what's being asked of this committee ultimately. I've also heard a reference to 600 million pages every year being copied. I'm not sure, first of all, if you could tell us what the source is for that information, because that might help.

Mr. Degen.

● (1650)

Mr. John Degen: My understanding is that most of that number, or at least over half of that number, comes from the York trial, so we're talking about evidence. We're talking about actual testing of copying that happened on a university campus in Canada. The rest would be what's historical from the licence.

Ms. Kate Edwards: They're from submissions to the Copyright Board and assessments of the tariff. Again, these are evidence-based, real copies made in Canadian institutions, and that has not changed in the last five years.

Ms. Julie Dabrusin: Then going back just to try to figure out how we go from there....

If I heard you correctly, Dr. Hanna, you were saying that you try very stringently to make sure that the copyright is followed in the way it is. What do you say to that 600 million figure for copying? What do you do to ensure that people in your institution are aware of what the rules are when they're copying?

Dr. Mark Hanna: I can speak to that. I can't speak to the 600 million copied pages, but I will say that, again, we rely heavily on publisher content in the classrooms, and we tend to use fair dealing more as supplementary material to add a different perspective to a particular topic.

In terms of making our faculty aware, we actually started with an awareness campaign. We called it "iCopyright" and we distributed tool kits and various educational materials. We followed that up by mandatory training where we actually have a copyright module where faculty has to get 100% on that copyright quiz for it to be considered completed in terms of the training. We also have a very robust library staff that I can support with my background in intellectual property with more of the complex questions.

Faculty, again, really want to make sure they're not outside of the law, so they will come to the copyright department at the college and ask, "Is this okay? Can we do this?" We take a very conservative approach. If we're not sure, we say no. If we think it's a grey area, we'll say no. That has been our experience.

Ms. Julie Dabrusin: Thank you.

The Chair: Thank you very much.

Now we'll go to Mr. Masse, who has two minutes.

Mr. Brian Masse: Thank you, Mr. Chair.

Mr. Degen, I cut you off early before, but in the subsequent testimony.... The issue of Canadian content and culture here is really important. My concern is that, even as we go through this process, even if there's a recommendation to break down the current copyright laws in place, by the time that would be tabled in Parliament, be subsequently re-tabled, and go through the Senate, we'll probably be outside this electoral cycle.

What else can we do in the meantime if nothing changes? You're expressing, I think, very unique concerns amongst the parties.

Mr. John Degen: We're well aware of the length of the timeline, and it's quite painful to us. I would say that the best quick fix right now would be the Copyright Board, speeding up the process of the Copyright Board, making the decisions of the Copyright Board clearly mandatory—which we believe they are already, but maybe carve that in stone for those who don't believe it—and putting statutory damages in place for non-compliance.

Our relationship with the Copyright Board is very similar to the colleges' relationship to the Copyright Board in the sense that we wait a very long time for the result, and our royalties are held in check until the decisions. Our relationship is slightly different in that we actually follow the rulings of the Copyright Board.

Mr. Brian Masse: Could I have a question reported to our researchers? Perhaps we could get an analysis from them in terms of decision-making time frames from the Copyright Board, maybe going back perhaps 10 years, perhaps even 20 years—that might be much too long—but I'd like to see if there's a trend in terms of copyright decisions. We've heard this enough from various witnesses. It would be interesting to find out if that timeline has changed or whether or not that needs adjusting under the digital age that we're now emerged under.

I believe that's probably the end of my time.

● (1655)

The Chair: Thank you.

We're having so much fun that we're going to go a second round of seven minutes, and we will call it a day after that.

Having said that, Ms. Ng, you have seven minutes.

Ms. Mary Ng (Markham—Thornhill, Lib.): Thank you so much to everyone for coming here and providing us with very helpful information.

There's clearly something that we're trying to understand, and I'm hoping that, through your testimonies, we will be able to better understand and get closer and closer to surfacing where that gap might be so that we can indeed continue the flourishing of Canadian content, which is so important to our country, and yet, at the same time, make that wonderful content available to our young people and people in our institutions, because they so depend on it.

I'm going to veer a bit in my question. The universities, colleges, and the institutions that are institutions of learning have these wonderful young people who go in, use material, learn from the material, and from there, they are innovating and they are creating. They are creating new and additional products or digital innovations, and I don't even know what the future is. The answer is that there's going to be wonderful future, and a lot of that will be done using the very works that are created by authors, by writers, and by many of our content creators in this country.

I would like to hear people's views as we look into the future. How do you look at this in terms of new work that is created? How do we achieve that balance? There's no question that there are some gaps there. There are gaps here, and I know that we'll get further into that in distant future testimony, but I also want to jump into the future and look at where we're going.

Maybe I'll start with Mr. Degen. How do you treat it? You have these new people who are going to create something wonderful and new, but perhaps also off of material from you and your members.

Mr. John Degen: What I would say is that it's very hard to prove a negative, obviously. What I would say in response to that is that I think there has been a suppression of creation of new works since 2010 and 2012. It's very ironic and unfortunate, because in 2013 Alice Munro won the Nobel Prize, and the eyes of the world turned to Canadian writing. If Canadian publishers are doing very well right now, perhaps it's because foreign sales have increased. I don't know for sure, but I'll let Kate answer that.

For the world to be looking at us and inviting us—we're going to be the country of honour at Frankfurt Book Fair in 2020—for all of that to be happening at the same time that Canadian writers are feeling alienated from their own education system, and in many cases, unable to continue, is a very unfortunate situation for us to be in.

Ms. Mary Ng: Thank you.

Maybe we will just keep going through.

Mr. Glenn Rollans: Again, I think it's a really robust solution to attach value and payment. It's flexible. It encourages innovation.

I'm always very worried when I'm asked to prove damage because we've been through a period of six years now from the amendment of the Copyright Act that should have been no holds barred. By that I mean we should have been expanding. We should have been making a bigger contribution than we were able to make to the Canadian economy and to Canadian life.

If you attach value to the use of value, if you reward the creation of value, you have something that will respond to changes in technology, changes in buyer preferences, tastes in fiction. It's a very robust and flexible system. When you break that chain—and I worry when I hear that the solutions are the public lending right, for example—and say you will have an allowance and can do your thing. We're not a craft. We're a profession. We've earned our chops. We do what we do because it's valuable to us and it's valuable to others. Seeing that reflection in the return makes it possible for us to keep doing it and to adjust to the times.

● (1700)

Ms. Mary Ng: Thank you.

To the others, please....

Ms. Victoria Owen: I think that's a great question.

We saw in the 2012 amendments the addition of user-generated content. I think that's something that addresses the future. We look at how people can use, rework, use material that is already there, riff off of it, and create something new.

That's an exception. I think it goes to the overall...the distribution of rights. Nobody is disputing that the majority of rights rests with the creators and the rights holders, but there is this little sliver of rights that are exceptions to those, and that's the area we're talking about. It's limited, so it isn't the kind of threat it's being characterized as.

I also think when we're looking at things like text and data mining —I think the chief librarian at Ryerson University also brought this up—what can we do with artificial intelligence in the future? Have a copyright act that's quite flexible and that can be creative. I think you want it to be open to those kinds of creative opportunities that are protected and within the realm of intellectual property.

Those are just some examples.

Ms. Mary Ng: Thank you.

Let's be really quick because I'm going to share some time with my colleague, David Lametti.

Please, go ahead, Dr. Hanna or Ms. Amyot.

Ms. Denise Amyot: There is something very important that maybe some members around this table are not aware of. I think as we move further, we need to be adaptable to changing technology, but we need to be inclusive. Why do I say "inclusive"? It's because we want to make sure that nobody is left behind.

Do you know that now, and I will quote my members, "Currently it is not permissible to break a digital lock even to create closed captions", which is an accessibility requirement in many provinces such as Ontario and other provinces? Therefore—

Ms. Mary Ng: I'm going to stop you there because I think, David, you wanted to get something in here.

Mr. David Lametti (LaSalle—Émard—Verdun, Lib.): Yes. We get submissions from various people as part of the committee, and we have submissions from two small Canadian publishers. Broadview Press claim in their submission to us that their annual revenue is $3.5 million and that the drop in Access Copyright revenue for them is $30,000. That's a drop of less than 1%. House of Anansi Press in their submission to us say their annual revenue is $7 million with a loss of about $15,000 to $17,000 in Access Copyright money in the education sector. Again, that's a loss of less than 1%, actually a quarter of 1%.

That seems to be a very different picture for small Canadian publishers in terms of their loss from Access Copyright revenues than we're being told. That's in their very own submissions to us.

Ms. Kate Edwards: If I might also quote from Broadview's submission. Leslie Dema, the president, says:

> The rise of copying as a substitute for the purchase of original works has caused a steep decline in Canadian sales revenue at Broadview Press. 55% of our revenue came from Canadian sales in 2013; this has dropped steadily, with only 41% of our revenue coming from Canadian sales in 2017.

If you read the brief, you will see that they have shifted their focus to the American market despite being very committed to Canadian authors and Canadian students, but there's not a market here for them to sell into anymore.

Mr. David Lametti: Maybe, but their Access Copyright revenue has dropped less than 1%.

The Chair: Thank you.

I'm sure that exchange could go on for a bit, but we'll move to Mr. Jeneroux for seven minutes.

Mr. Matt Jeneroux: Thank you, Mr. Chair.

Mr. Baylis' line of questioning definitely echoed Mr. Lametti's in terms of getting a lot of the information that he was looking for. I think that would be helpful for the entire committee.

There are so many questions, but so little time. Thanks for bearing with us.

I would like your opinions around the table here on ways that concrete changes could be made to the Copyright Board, a restructuring of it. What would that look like if you were given free rein to structure the Copyright Board?

I'll start with Colleges and Institutes Canada.

Dr. Mark Hanna: I mentioned that we were the patient recipients of their decisions. Their decisions can often have profound impact, especially if we're dealing with tariffs, in terms of the expenditures that the college would have to anticipate. It would be great if the board was better resourced to deliver decisions in a more timely manner.

● (1705)

Mr. Matt Jeneroux: Sorry, does that mean financially resourced?

Dr. Mark Hanna: I assume "financially resourced" would translate into human resources, whether it be better support for research or analysts. I'm not sure what's always causing the delay, but the decision is often pretty significant in terms of the consequences that are hanging in the balance.

Mr. Matt Jeneroux: So you mean people, essentially.

Ms. Victoria Owen: Basically, yes.

The Canadian Federation of Library Associations did submit a brief in the Copyright Board submissions, so we can refer to that and send it in again.

One of the things we would like to make clear is that we are able to purchase content from a number of sources, and we should have the choice to be able to look at where we get our content from and how we negotiate those rights. It is one in a variety of options that are available. Certainly for academic libraries and public libraries, it's one of a suite of things that we can purchase.

Mr. Glenn Rollans: The question is specifically how we would address the Copyright Board.

We've also submitted a brief, and the first recommendation in it is to appoint case managers to manage procedural issues and codification of case management rules and timelines. The kicker is so that the process can be more efficient. It moves too slowly to really affect, in real time, our ability to produce materials.

Mr. Matt Jeneroux: Mr. Chair, I'd just note that there's agreement in the room here on at least something today.

Mr. Glenn Rollans: I'll go beyond that. I agreed with about 90% of CFLA's statement. We're all part of a culture of reading and there's broad agreement, but there are some significant issues.

The second recommendation is to address statutory damages available to collectives to encourage compliance with certified tariffs. At this point, enforcement proceeds infringer by infringer. It's an expensive process. I think Mr. Degen also addressed this. We need a copyright board whose decisions are respected by the marketplace and treated as mandatory as decided in the Access Copyright v. York University decision.

Mr. John Degen: I would just reiterate exactly that. We have certified tariffs on the books right now that are not being paid, so what is the point of having a quasi-judicial copyright board that makes these decisions if the decisions are not mandatory?

As well, my personal experience with the Copyright Board was being asked to be a witness there in a tariff proceeding. It was a tariff proceeding between the writing and publishing side and the educational side. The writing and publishing side of the courtroom was full, and the educational side was empty because they chose not to show up and defend their position.

I think there is a real absence of enforcement, which needs to be addressed.

[*Translation*]

Mr. Alupa Clarke: Ms. Amyot, I would like to know something.

How beneficial have the amendments made to the Copyright Act, in 2012, been for Canada's millions of students? Have the amendments significantly increased their access to knowledge, such as authors' knowledge?

Ms. Denise Amyot: I will digress from today's discussion.

Regarding knowledge, the major change that has occurred since 2012 has to do with the fact that many sources of information are available. Before, people did not have access to so many documents, films and presentations. We are currently witnessing a dramatic increase in access, for all programs. For teachers, that is very beneficial, as they are not presenting a single point of view from one book, but several points of view, so that students are exposed to various ways of thinking, which often come from a number of different cultures. That enriches education.

Mr. Alupa Clarke: There are thousands of professors in the institutions you represent.

Ms. Denise Amyot: I represent 130 of those institutions.

Mr. Alupa Clarke: Are there any established ethical practices in the sector to ensure that professors are careful about the use of material? Have you surveyed professors to find out how they view the current demands in terms of compensation?

● (1710)

Ms. Denise Amyot: Yes, we have conducted surveys.

We have been working on this issue for many years. Some of my colleagues have worked on this for years. We wanted to ensure that what we were doing was meeting the legal requirements. Institutions needed assistance to get there. We provided workshops and a series of tools to help them.

Earlier, Mr. Hanna gave an example of what is being done at his college. Mandatory training is provided. People are asked to complete a quiz until they score 100%. That is unlike quizzes we had to do in school, where the passing grade was 60%.

This shows that we are taking the matter seriously. We must never forget that authors are among our members.

Mr. Alupa Clarke: All my university professors were publishing content.

Ms. Denise Amyot: Exactly. That is why it is very important to respect creation. After all, we are educating future creators.

Mr. Alupa Clarke: I have one last question.

The gentleman was saying that there was no competition between those two rights—the right to ownership and the right to knowledge. Do you think that's true? Millions of people are benefiting from the 2012 provision. Do you think you have achieved a balance in the competition between those two rights?

Ms. Denise Amyot: What do you mean by "balance"?

Mr. Alupa Clarke: I am talking about the right to access knowledge and the right to ownership.

Ms. Denise Amyot: What I can say is that we are spending more money. I think that answers the question. I think what is being said on the other site of the table right how is that we must take into account—I think Mr. Longfield talked about this—the fact that

[*English*]

the supply chain is important.

[*Translation*]

Everything must be considered as a whole. However, only two elements are being considered right now: how many are spending and how many are receiving.

I am an author. I have published content in the past. When I found out that authors were receiving up to 10% in copyright fees, I was envious.

The Chair: Mr. Clarke, I have to stop you here, as your time is really up.

[*English*]

Mr. Masse, you have seven minutes if you'd like to use it.

Mr. Brian Masse: Thank you, Mr. Chair.

Mr. Rollans, you've advocated for a change to the system now. If we don't get to that change, as I was mentioning to Mr. Degen prior to this round—I've heard again that you noted the Copyright Board as a potential—what would be the things to prioritize in the interim? If there's a concern that's being expressed now, even as this committee goes about its process, are there things that should be done under the current administration of the law that's been put in place that would be helpful at this time?

Mr. Glenn Rollans: There have been some mentioned, but I would add one. I think that the Government of Canada has significant financial leverage in the post-secondary sector in particular. I know that, as a publisher, if I apply for public funding, I'm asked to demonstrate that I'm paying contributors to publications properly. I have to demonstrate that my royalty account is up to date and that it's auditable. I think it's reasonable to suggest that if the Government of Canada wants the post-secondary sector to relicense, that it could make that a condition of funding, and I'd recommend that.

Mr. Brian Masse: Just to follow up with regard to the Copyright Board—and I want to make sure there is consensus here for that—if the current Copyright Board structure were one where the decisions were made in a relatively predictable time frame and were enforced, would that be a preferred step forward?

It seems what we're hearing, not only from you but from other witnesses, is that it's an anomaly to understand when a decision will take place, and then there seems to be some lack of clarity about what takes places after the decision.

I'll start with Mr. Degen and go across the board. Ms. Amyot, if you want to add something, then you can with the remainder of my time, because you were cheated earlier.

● (1715)

Mr. John Degen: Enforcement first is what I would say, if we're talking about options—enforcement or speed it up.

We have decisions done and on the books that are not being paid. In just one of them, there is $9 million a year that is not being paid to our sector by the educational sector. This is a tariff that has been decided by the Copyright Board. Yes, we need enforcement right away.

Mr. Glenn Rollans: I agree with that, and I'll just add the point that the Copyright Board is well down the road from licensing. In an ideal relationship, if the right incentives and the right sanctions are in place, we'll be back at the table any time, literally. I will travel anywhere in the country to work towards negotiated licences. That's the preference.

If we can't reach agreement on a negotiated licence that matches payment to value, the Copyright Board is a really important backup.

Ms. Katherine McColgan: I would say that one of the main things is that any decisions that are made would not be retroactive, so a decision would be made and then carried forward but it can't be expected to be applied going back three or four years.

The second point is that if there is a tariff regime, it should be optional, because there are many other sources. We mentioned that you can acquire information and we pay lots of money in licensing, so—

Mr. Brian Masse: Okay, but I'm really more interested in the current model that's operating. I'm not asking you to change the model of the Copyright Board.

Do you subscribe to its current operational methods if it would have a quicker turnaround in terms of the decision-making process, and would you live with it or abide by its decisions? If you don't, that's okay, but I'm trying to get a sense as to whether that structure can be used in the interim, or whether it should be something else.

Ms. Katherine McColgan: There need to be more resources put toward it to make it more efficient, as has already been mentioned.

Ms. Denise Amyot: Change the interrogatory process to make it shorter and less burdensome.

Mark may have another example.

Dr. Mark Hanna: I guess you don't want to speak to the issue of the mandatory tariff at this point.

Mr. Brian Masse: I'm sure I'm out of time.

Maybe you can make that submission later. I'm just trying to get a general idea as to whether or not—at least at the starting point, as we go about this process—there are some fixable items that perhaps we could address. That's all I'm looking for now.

Ms. Denise Amyot: One of the things is that there needs to be compliance between the Copyright Act and the Accessibility Act. This is a must.

Mr. Brian Masse: I'm glad you added that, as a former job developer on behalf of persons with disabilities. The Marrakesh treaty is only good if it actually relates to a product at the end of the day.

Ms. Denise Amyot: Exactly, yes.

Ms. Victoria Owen: On the Copyright Board, one of the things we would look for is regarding the interrogatories, that the interrogatories only applied to the institutions before the board.

The Chair: We have two minutes left.

Mr. Baylis.

Mr. Frank Baylis: Thank you.

I would like a couple of clarifications, and I have one question.

Ms. Owen, when you say that the percentage of profit has increased, I would like just to point out that I'd rather have a 9% profit on $1 million of sales than a 10% profit on $100,000. It's a nice number to throw out, but it's actually meaningless unless you have the actual profit amounts. The percentage of profit can go up, but the actual profits can go down radically. I point that out.

[*Translation*]

Ms. Amyot, I would like to come back to the fact that 70% of your institutions pay more or pay the same amount. I would again like to point out that I am interested in knowing what amounts are given to Canadian creators. Germans may be paid more, but I'm interested in our Canadian creators.

[*English*]

Ms. Edwards, you said something about an Australian model. Can you elaborate a bit on that, please?

● (1720)

Ms. Kate Edwards: Australia has a statutory licence in place. All schools are licensed. That rate is negotiated between the educational institutions and the sector. The current rate for K-to-12 schools, just as an example, is close to $17 per full-time equivalent. That rate has been in place since 2012, with that revenue being distributed back to rights holders.

Mr. Frank Baylis: Is that for Australian rights holders or for those outside Australia as well?

Ms. Kate Edwards: They have a reciprocal agreement with Canadian copyright collectives. Some of the revenue Glenn mentioned earlier that is coming to Canadian rights holders from foreign sources would come from Australia if Canadian content is being used in those schools.

Mr. Frank Baylis: Australia made these certain levels of charges per grade. Is that what I understand? Then there's a collective that drives it back to Australia and to foreign writers as well?

Ms. Kate Edwards: Yes. There's a rate for the equivalent of K-to-12 schools here, and then a rate for post-secondary institutions.

Mr. Frank Baylis: Do they have as well a fair dealing carve-out that works, or do they not have one? What do they have?

Ms. Kate Edwards: They do. Fair dealing for education is in place, but in a licensed context.

Mr. Frank Baylis: Would this Australian model work for the libraries or the institutions?

Ms. Victoria Owen: The Australian model also has "fair use".

Mr. Frank Baylis: That's what I'm saying, so would it work?

Ms. Victoria Owen: It's a broader interpretation because it's "such as". It would be broader than the current fair dealing exceptions in Canada. If we're moving to a broader fair dealing environment, libraries would be very supportive of it.

Mr. Frank Baylis: That would be something that we should investigate more, then.

Ms. Victoria Owen: With the licensing, we'd be very cautious about it, because with public institutions in Canada, we are.... This is public money. I think we have to have due diligence, and we are coming from a history where we paid twice for materials, so part of this is reconciling that we're not paying—

Mr. Frank Baylis: I understand that, but from your perspective, is this Australian model something that we should investigate more?

Ms. Victoria Owen: With the fair dealing and the fair use, yes, if it's broader—not regarding the licensing.

[*Translation*]

Mr. Frank Baylis: Ms. Amyot, do you have anything to add?

[*English*]

Ms. Denise Amyot: I won't add anything. Victoria mentioned it.

Mr. Glenn Rollans: Could I add something?

Mr. Frank Baylis: Please do.

Mr. Glenn Rollans: The Canadian tariff in place for K-to-12 is less than $2.50 per full-time equivalent, so there is a lot of room between there and $17 to talk about what's in included in a licence or a tariff. We're in business. We're ready to talk.

Mr. Frank Baylis: Thank you.

The Chair: That's excellent.

On that note, I would like to thank our witnesses for coming in today. You've all been very respectful with one another and have given us some interesting points of view that we are going to need as we continue further down this path. I thank you for coming in today and for your contribution.

I thank everybody else. We are adjourned.

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